

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

ATLANTIC COAST CONSERVANCY, INC.

Plaintiff

vs.

CIVIL ACTION NO.

**UNITED STATES DEPARTMENT OF THE
TREASURY, an agency of the United States**

Defendant

**COMPLAINT FOR DECLARATORY JUDGMENT
AND/OR INJUNCTIVE RELIEF
(FREEDOM OF INFORMATION ACT)**

1. This action is brought to remedy violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.* Specifically, it challenges the failure of the U.S. Department of the Treasury and its component, Internal Revenue Service, to provide a determination within the time required by FOIA in regard to Atlantic Coast Conservancy, Inc.’s February 2, 2017 (“F17033-0066”) request for information (“Request”) and seeks to compel the disclosure of documents and records improperly withheld.

PARTIES

2. Atlantic Coast Conservancy, Inc. (“ACC”) is a 501(c)(3) non-profit corporation organized under the laws of the State of Georgia with its principal place of business at 72 S. Main St., Jasper, Georgia 30143.

3. The U.S. Department of the Treasury (“Treasury”) is a department of the executive branch of the United States government, and includes component entity Internal Revenue Service (“IRS”). The Treasury is an agency within the meaning of 5 U.S.C. § 552(f)(1), and is responsible for responding to and fulfilling ACC’s Request and complying with all federal laws. The Treasury

can be served pursuant to Fed. R. Civ. P. 4 by serving the United States and delivering a copy of the summons and complaint by registered or certified mail to Internal Revenue, Attn: CC: PA, 111 Constitution Ave., N.W., Washington, DC 20224.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action, as well as personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B), as the county of ACC's principal place of business, Pickens, lies within the Gainesville Division of the Northern District of Georgia.

STATUTORY BACKGROUND

6. Upon receipt of a written request that "reasonably describes" the records sought and complies with "published rules . . . and procedures," agencies of the United States government are required to promptly disclose their records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in FOIA. 5 U.S.C. § 552(a)(3)(A).

7. FOIA provides that agencies shall "determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor; and the right of such person to seek assistance from the FOIA Public Liaison of the agency." *Id.* at § 552(a)(6)(A)(i).

8. In "unusual circumstances," an agency may extend the 20-day time limit for up to ten additional working days by providing written notice to the requester "setting forth the unusual circumstances for such extension" and the date on which the determination is expected to be dispatched. *Id.* at § 552(a)(6)(B)(i).

9. In limited circumstances, FOIA allows an agency to seek an extension beyond 10 days. Specifically, FOIA requires an agency to provide written notification to the requester: (1) offering an opportunity to limit the scope of the request so that it may be processed within the 20 work-day limit, or (2) offering an opportunity to arrange with the agency an “alternative time frame” for processing the request. *Id.* at § 552(a)(6)(B)(ii). If the agency elects this option, it must (1) make its FOIA Public Liaison available to the requester to assist in any disputes with the agency; and (2) “notify the requester of the right . . . to seek dispute resolution services from the Office of Government Information Services.” *Id.*

10. If the agency fails to make a determination on a document request within 20 work-days, or within the limited additional time permitted upon proper notification of “unusual circumstances,” the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review. *Id.* at § 552(a)(6)(C)(i).

11. A determination has been made if the following elements are satisfied:

(1) a statement of what the agency will release and will not release, including a list of the documents that are releasable and withheld; (2) a statement of the reasons for not releasing the withheld records; (3) a statement notifying the requesting person of his right to appeal to the head of the agency or seek judicial review of any adverse determination; and (4) if a fee is charged for releasing documents, a statement of why the agency believes that waiver or reduction of the fee is not in the public interest and does not benefit the general public, and a statement for the charges for document search and duplication of the releasable documents.

Shermco Industries, Inc. v. Secretary of U.S. Air Force, 452 F. Supp. 306 (1978), *rev’d on other grounds*, 613 F.2d 1314 (5th Cir. 1980); *see also Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 182–83 (D.C. Cir. 2013) (“[T]he agency must at least indicate within the relevant time period the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents.”).

26 C.F.R § 601.702

12. The IRS is required under 5 U.S.C. § 552(a)(1) to state and publish in the Federal Register, *inter alia*, “the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures,” “[r]ules of procedure,” and “[s]ubstantive rules of general applicability adopted as authorized by law.” *See* 26 C.F.R. § 601.702(a)(i)(B)–(D).

13. Pursuant to 26 C.F.R. § 601.702(c)(9)(v):

Where the records requested [from the IRS] cannot be located and evaluated within the initial twenty day period *or any extension thereof* in accordance with paragraph (c)(11) of this section, the search for the records or evaluation ***shall*** continue, ***but the requester shall be notified, and advised that the requester may consider such notification a denial of the request for records. The requester shall be provided with a statement of judicial rights along with the notification letter.*** The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time shall not constitute a waiver of the requester’s right to appeal or seek judicial review of any denial of access ultimately made or the requester’s right to seek judicial review in the event of failure to comply with the time extension granted.

(Emphasis added).

14. “If . . . a determination is made that there are no responsive records, or if no determination is made within the twenty day periods specified in paragraphs (c)(9) and (10) of this section, or the period of any extension pursuant to paragraph (c)(11)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action in a United States district court . . . pursuant to 5 U.S.C. 552(a)(4)(B).” 26 C.F.R. § 601.702(c)(13).

STATEMENT OF FACTS

15. ACC submitted its Request (“F17033-0066”) two years and seven months ago on February 1, 2017, seeking information “from 2016” related to the Land Trust Alliance (“LTA”), namely:

- a. Correspondence, including, but not limited to, emails, letters, or facsimiles from employees of IRS, Chief Counsel, Income Tax and Accounting, to the LTA or any individual associated with the LTA, including, but not limited to, Andrew Bowman, Wendy Jackson, Russ Shay, Timothy Lindstrom, Steven Small, and Andrew McLeod;
- b. Correspondence, including, but not limited to, emails, letters, or facsimiles from LTA, or any individual associated with the LTA, including, but not limited to, Andrew Bowman, Wendy Jackson, Russ Shay, Timothy Lindstrom, Steven Small, and Andrew McLeod to employees of IRS, Chief Counsel, Income Tax and Accounting;
- c. Any documents, including white papers or studies, provided to employees of IRS, Chief Counsel, Income Tax and Accounting, by the LTA or any individual associated with the LTA, including, but not limited to, Andrew Bowman, Wendy Jackson, Russ Shay, Timothy Lindstrom, Steven Small, and Andrew McLeod; and
- d. Any and all documents of any employees of IRS, Chief Counsel, Income Tax and Accounting reflecting any conversations, including, but not limited to, notes taken during in-person or telephonic meetings, between employees of IRS, Chief Counsel, Income Tax and Accounting and any individual associated with the LTA, including, but not limited to, Andrew Bowman, Wendy Jackson, Russ Shay, Timothy Lindstrom, Steven Small, and Andrew McLeod.

See Exhibit A (attached hereto).

16. On March 3, 2017, Treasury (via its FOIA Public Liaison) notified ACC that it was not able to “obtain” the records requested by ACC and, therefore, not able to “complete” its Request. The Treasury asked for additional time to obtain and review any responsive records, but ACC was not advised that it could consider such notification a denial of the request for records. Nor was it provided with a statement of judicial rights.

17. On May 30, 2017, Treasury (via its FOIA Public Liaison) informed ACC that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *See Exhibit B (attached hereto).* The Treasury added that it would contact ACC by **August 30, 2017** in the event it was “still unable to complete [the] request.” *Id.* No

determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

18. On **August 23, 2017**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **November 20, 2017** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

19. On **November 4, 2017**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **February 18, 2018** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

20. On **February 8, 2018**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **May 8, 2018** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

21. On **May 1, 2018**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **August 1, 2018** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

22. On **July 31, 2018**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **October 30, 2018** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor

were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

23. On **October 26, 2018**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to its previous letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **December 20, 2018** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

24. On **January 29, 2019**, the Treasury’s FOIA Public Liaison contacted ACC and explained that he “was furloughed from December 22, 2018 through January 25, 2019” but that the Treasury was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* The Treasury added that it would contact ACC by **March 25, 2019** in the event it was “still unable to complete [the] request.” *Id.* No determination was provided, nor were any “unusual circumstances” set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.*

25. On **June 18, 2019**, Treasury (via its FOIA Public Liaison) informed ACC that it was still unable to complete the Request. *See id.* It referred back to a March 18, 2019 letter and stated that it was “still working on [the] request and need[ed] additional time to obtain and review any responsive records.” *Id.* No “unusual circumstances” were set forth. *See id.* The Treasury also failed to advise ACC that it could consider the letter a denial of the request for records; to provide ACC with a statement of judicial rights; and to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services. *See id.* Again, the Treasury added that it would contact ACC by **September 18, 2019** in the event it was “still unable to complete [the] request.” *Id.*

26. Notwithstanding the requirement of a response within 20-days, or the period of any extension due to “unusual circumstances” or by grant of the requestor, respectively, the Treasury has not provided an adequate “determination.” Nor has it produced (or indicated that it has even searched for) any responsive records to ACC’s Request. *See Public Employees for Envtl. Resp. v. U.S. Envtl. Protec. Agency*, 314 F. Supp. 3d 68, 78 (D.D.C. 2018) (“[A]ny refusal by the requestor to . . . arrange [] an alternative time frame may **only** be considered as a factor in determining whether exceptional circumstances exist to warrant additional time for the agency to comply with the request for records. In other words, . . . the [requestor’s] refusal . . . does not excuse the agency from conducting a search and responding to the request **in full.**”) (emphasis added) (internal quotation marks and citations omitted).

27. As of the date of this filing, no determination has been provided as to whether the Treasury will comply with ACC’s Request. Nor have any “unusual circumstances” been properly set forth in any writing. At all relevant times, the Treasury has failed to advise ACC that it may consider its monotonous, unsubstantive letters an adverse determination and/or denial of ACC’s

Request; to provide ACC with a statement of judicial rights; or to notify ACC of the right to seek dispute resolution services from the Office of Government Information Services.

28. Because the Treasury has failed to provide a proper determination (or even a proper notification letter) and has failed to produce non-exempt responsive records within the time limits prescribed by FOIA, ACC has constructively exhausted any applicable administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 26 C.F.R. § 601.702(c)(9)(v) (“[A] voluntary extension of time shall not constitute a waiver of the requester’s right to appeal or seek judicial review of any denial of access ultimately made . . .”).

CLAIM FOR RELIEF

29. ACC herein incorporates all allegations contained in the preceding paragraphs.

30. FOIA provides that a person shall obtain non-exempt responsive records promptly. 5 U.S.C. § (a)(3)(A).

31. ACC properly requested records and information known to be within the control of the Treasury on **February 1, 2017**.

32. To date, the Treasury has failed to provide ACC with a determination as to whether it has any non-exempt records responsive to the Request and, whether it intends to release such records within the requisite time frame. *Id.* at §§ 552(a)(6)(A)(i), 552(a)(6)(B)

33. The Treasury failed to properly invoke and comply with the requisite provisions in FOIA permitting an extension of time to dispatch a determination by not setting forth in writing any “unusual circumstances” for such an extension and by not “notify[ing ACC of its] right . . . to seek dispute resolution services from the Office of Government Information Services.” *Id.* at §§ 552(a)(6)(B)(i), (ii).

34. The Treasury also failed to advise ACC that it could consider any of its numerous notification letters a denial of ACC's Request and, in turn, neglected to provide ACC with a statement of judicial rights "*along with the notification letter[s].*" 26 C.F.R. § 601.702(c)(9)(v) (emphasis added).

35. The Treasury's failure to comply with these FOIA requirements and regulations is subject to judicial review under 5 U.S.C. § 552(a)(4)(B).

36. Accordingly, ACC is entitled to injunctive and/or declaratory relief with respect to a determination on its Request.

PRAYER FOR RELIEF

ACC respectfully requests that the Court enter a judgment providing the following relief:

1. Declare that the Treasury violated FOIA by failing to make a determination as to ACC's Request and/or by failing to produce non-exempt, responsive records to ACC's Request within the statutory time limits;
2. Order the Treasury to search for, process, and/or release all non-exempt records responsive to ACC's Request at no cost to ACC within 10 days from the date of any such order or, alternatively, by a date certain;
3. Order the Treasury to provide ACC with a final determination within 10 days from the date of any such order or, alternatively, by a date certain;
4. Enjoin the Treasury from continuing to withhold and/or refusing to search for any and all non-exempt records responsive to ACC's Request;
5. Retain jurisdiction of this action to ensure the search and processing of ACC's Request, and ensure that no responsive records are wrongfully withheld;

6. Award ACC costs, including reasonable attorneys' fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

7. Grant ACC any and all other relief that the Court deems just and proper, whether general or special.

This the 12th day of September, 2019.

**ATLANTIC COAST CONSERVANCY,
INC.**

/s/ Amy Williams

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CERTIFICATE OF SERVICE

I, Amy Williams, do hereby certify that I have electronically filed the foregoing pleading with the Clerk of the Court using PACER/ECF, which sent notification of such filing to all counsel of record on this the 16th day of September, 2019.

/s/ Amy Williams

Amy Williams (GA Bar No. 995513)
ATTORNEY FOR PLAINTIFF